



OFFICE OF THE DISTRICT ATTORNEY
BUCKS COUNTY JUSTICE CENTER
100 NORTH MAIN STREET
DOYLESTOWN, PENNSYLVANIA 18901

April 12, 2019

MATTHEW D. WEINTRAUB
DISTRICT ATTORNEY
(215) 348-6344

Police Chief Michael Cummings
New Hope Borough Police Department
125 New Street
New Hope, PA 18938

RE: Officer Involved Shooting on March 3, 2019 in New Hope Borough Police Department's Holding Cell
SUBJECT: District Attorney's Official Review of Officer Involved Shooting
DECISION: Officer Involved Shooting is excused due to mistake of fact.

Dear Chief Cummings,

After careful consideration, I have determined that Cpl. Matt Zimmerman's shooting of arrestee Brian Riling on March 3, 2019, was neither justified, nor criminal, but was excused. My decision is based upon the totality of the circumstances. The law excuses Cpl. Zimmerman's conduct due to his honest but mistaken belief that he was Tasering Riling at the time he shot him. Cpl. Zimmerman would have been justified in deploying a Taser to subdue Riling at the time he shot him. I reached my decision based on my interpretation of the law and as a matter of prosecutorial discretion for the reasons set forth herein.

I have reviewed the following materials in making my determination:

- New Hope Borough Police Department reports relating to a prior incident in which Riling was arrested for a nighttime burglary and stalking of ex-girlfriend [REDACTED] while she was home, and related offenses, which occurred on February 17, 2019.
- New Hope Borough Police Department reports relating to an incident between Riling and [REDACTED] on March 3, 2019, for which Riling was charged with intimidation and retaliation against a victim, simple assault and related offenses, immediately prior to Riling's arrest and shooting.
- Text messages between Riling and [REDACTED] which included over 100 text messages from Riling in a short period, with very few replies from [REDACTED]
- Video from 2/17/19 and 3/3/19 at [REDACTED] place of employment in New Hope Borough, the Greenhouse, which was scene of two of Riling's confrontations of [REDACTED]

- NMS lab report analysis of Riling's blood on March 3, 2019, indicating that he had a combination of methamphetamine, amphetamine, and alcohol in his system at the time of his arrest on March 3, 2019.
- Police reports relating to the officer involved shooting from Cpl. Haas, Officer Hagan, and Cpl. Zimmerman
- Holding cell video and audio of the shooting incident itself, as well as attendant video of other areas of the New Hope Borough police station.
- Photographs of the shooting scene and attendant locations.
- Audio interview of [REDACTED]
- Audio interview of Brian Riling.
- New Hope Borough Police Department policies on:
 - use of force, weapons, 1-30-07
 - Taser, 10-10-07
 - arrest and custody of prisoners, 1-30-07
- Bucks County Detectives' interviews of Cpl. Zimmerman.
- 911 calls.
- Police radio dispatch and written reports.
- Cpl. Zimmerman's internal personnel file, including
 - letters of commendation
 - disciplinary actions
 - trainings and certifications
 - letter of retirement dated April 10, 2019
- 18 Pa.C.S.A. §2701(a)(2) Simple Assault
- 18 Pa.C.S.A. §304 Ignorance or Mistake

In concluding that Cpl. Zimmerman's March 3, 2019 shooting of Brian Riling was excused, and neither justified, nor criminal, I relied on the following facts. At the time of his March 3, 2019 arrest, Brian Riling was to be the subject of a New Hope Borough Police Department criminal complaint alleging that he broke into [REDACTED] home on February 17, 2019, at night with a crowbar when she was present. On March 3, 2019, prior to Riling's arrest, [REDACTED] again complained to the police that Riling had spit in her face and grabbed her by the neck earlier that night at her workplace, the Greenhouse.

There, on scene at the Greenhouse, [REDACTED] showed police Riling's text messages in which he directed her to recant her statements against him, threatened to kill himself rather than to go back to jail, and threatened to harm her as well. She then let the New Hope Borough Police Department, including Cpl. Zimmerman, listen to Riling verbalize many of these same threats over the phone while she muted her end of the line.

With this knowledge of Riling's crimes and unpredictably dangerous behavior, Cpl. Zimmerman and other officers set out to locate and arrest Riling. Cpl. Zimmerman retrieved his Taser from his squad car and secured it on the right front of his own waistband, in front of his

service weapon, in case Riling was violent or resisted arrest once they found him. He and the other officers then found Riling that night in his truck within view of [REDACTED] home. While not completely resistant upon arrest, Riling was also not completely compliant with their commands either. He was taken to the police station and continued to passively resist them. Though he was searched a number of times, Riling acted furtively by continuously reaching toward his waistband all throughout his arrest and transport. This caused police to continue to suspect that he had either drugs or a weapon on him, despite having already searched him.

Once at the police station, Ofc. [REDACTED] directed Riling into the holding cell. He then ordered Riling to remove his belt. Riling began unlooping his belt, when a white plastic rectangular object, consistent with a drug baggie, visibly fell from his waistband onto the cell floor. Riling immediately stepped on it. [REDACTED] then attempted to move Riling off of the object by pushing him down onto the cell bench, but Riling, a physically fit 6'4, 240 pound construction worker, was able to keep his foot on the object. Ofc. [REDACTED] and Riling were wrestling on the bench when Cpl. Zimmerman entered the cell behind Ofc. [REDACTED] At that point during the struggle, Riling picked up the object he had been stepping on and threw it into the cell toilet. Cpl. Zimmerman tried to assist Ofc. [REDACTED] but was unable. Cpl. Zimmerman then yelled "Taser!" while wielding his service firearm and shot Riling in the stomach. As Riling went to the floor, he flushed the toilet where he had just discarded the object that had been under his foot.

When Riling asked Cpl. Zimmerman if he Tasered him, Zimmerman admitted that he shot him with his gun. Cpl. Zimmerman then left the cell, and Riling was first tended to by other police officers, then EMS, and was ultimately transported to St. Mary's Medical Center. Cpl. Zimmerman handed his service weapon and his Taser to Cpl. Haas immediately after the incident. Cpl. Zimmerman was immediately placed on paid administrative leave as of the date of this incident. On April 10, 2019, Cpl. Zimmerman retired from the New Hope Borough Police Department.

Brian Riling was in critical condition for a few days with a gunshot wound to his torso, but has recovered. He came to the District Attorney's office for an interview on March 27, 2019 under his own power and accompanied by his civil attorney, Susan Lin, and his criminal attorney, Richard Fink.

New Hope Borough Police Department's Taser policy permits an officer to Taser a dangerous or violent subject when deadly force doesn't appear to be justified and/or necessary. The Taser is not a substitute for deadly force and should not be used in deadly force situations. It may be used where the detainee employs physical actions that attempt to prevent officer control. Prior to using a Taser, the officer must consider the totality of the circumstances, which include: the current threat level, the severity and violence level of the crime suspected, and the subject's history of violent behavior. An officer may use his Taser to defend others against combative actions, and when lower-level force is either exhausted or ineffective.

Based upon the totality of the circumstances, Cpl. Zimmerman would have been justified to use his Taser on Riling in the holding cell in order to protect Ofc. [REDACTED] during the scuffle in order to temporarily incapacitate Riling. The video of this incident neither shows Riling attempting to harm Ofc. [REDACTED] nor to get his gun from him. However, Cpl. Zimmerman had a reasonable belief that both of these scenarios were possible based upon the following factors: Riling's resistance when Ofc. [REDACTED] attempted to control him in the holding cell, combined with what he knew of Riling from [REDACTED], from Riling's text messages to [REDACTED] from Riling's own audible words in his phone call with [REDACTED], from Riling's lack of compliance and furtiveness during his arrest, the general violent nature of the conduct underlying Riling's current arrest, and based upon his observations of Riling's apparent drugged condition, and overall size and fitness.

According to New Hope Borough Police Department's deadly force policy, pointing a firearm and pulling the trigger is a use of deadly force. An officer's use of his firearm must be his last resort. In order for an officer to be justified in his use of deadly force, he must have exhausted all other reasonable means to defend others and himself from death or serious bodily injury before resorting to using his firearm.

Based upon the totality of the circumstances, Cpl. Zimmerman was not justified in shooting Riling. He had not exhausted all other reasonable means to defend Ofc. [REDACTED] and himself from death or serious bodily injury when he fired his weapon and shot Riling. In other words, Cpl. Zimmerman should have done what he believed he was doing in the first place, and Tasered Riling. Instead, he shot him by mistake.

In addition to considering the facts of this case, the pertinent New Hope Borough Police Department policies, and the applicable criminal law, I also considered Cpl. Zimmerman's service record and his training compliance record in making my determination that his conduct is excused, but neither justified, nor criminal. New Hope Borough Police Department policy requires all of its officers to be routinely trained on the use of the Taser. Cpl. Zimmerman's Taser training was not up to date at the time of this incident. Departmental regulations require that an officer wear his Taser on his non-dominant side of his belt, in a cross-draw position. At the time he drew his service weapon and shot Riling, Cpl. Zimmerman's Taser was located next to his gun, and not in the required cross-draw position on his belt.

Nonetheless, under the totality of the circumstances, Cpl. Zimmerman's lack of compliance with departmental policies does not give rise to criminal liability. Section 304 of the Pennsylvania Crimes Code (Title 18) states that a person has a defense to a criminal charge if he makes a mistake as a matter of fact for which there is a reasonable explanation or excuse. In the instance that a mistake of fact exists, it negates the criminal state of mind required to establish a material element of the offense. In this case, Cpl. Zimmerman reasonably believed that he held his Taser when he shouted "Taser!" at Riling in the holding cell. When he fired his weapon at Riling and shot him, Cpl. Zimmerman intended to Taser him, not to shoot him. Therefore, Cpl. Zimmerman lacked the requisite criminal mental state needed to be guilty of

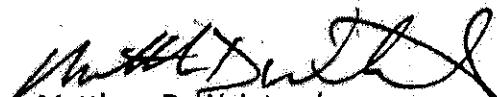
simple assault for negligently causing Riling bodily injury with his gun, as required by that statute. Cpl. Zimmerman is not guilty of any crime.

Additionally, I would note that Cpl. Zimmerman has protected and served the citizens of New Hope Borough as a police officer for thirty-three years. Though he has a few, relatively minor, disciplinary infractions in his file, he has had none since 2009, and the totality of those pale in comparison to his record of commendations and public service. Cpl. Zimmerman has a lengthy history of excellent police service to the New Hope Borough Community, as evidenced by many letters of commendations both from police supervisors and citizens alike.

For all of the forgoing reasons, Cpl. Zimmerman will not be charged criminally for his conduct on March 3, 2019 as a result of shooting Brian Riling.

I now consider this investigation closed, and this matter concluded.

Respectfully Submitted,



Matthew D. Weintraub
District Attorney

MDW/men

CC: Martin F. McDonough, Chief Detective